National Labor Relations Board Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991

May 26, 2006 W-3053

<u>CASES SUMMARIZED</u> VISIT WWW.NLRB.GOV FULL TEXT

Children's Center for Behavioral Development	Centreville, IL	1
Expert Electric, Inc	New York, NY	1
Scripps Memorial Hospital Encinitas	Encinitas, CA	3
Service Employees Local 1107.	Las Vegas, NV	3
<u>United Electrical Contractors Assn.</u>	New York, NY	4

OTHER CONTENTS

<u>List of Decisions of Administrative Law Judges</u>	5
Test of Certification Case	6
List of Unpublished Board Decisions and Orders in Representation Cases	6

- Uncontested Reports of Regional Directors and Hearing Officers
- Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders

Press Release (<u>R-2589</u>): Nancy Recko Appointed Deputy Regional Attorney in NLRB's

Cleveland, OH Regional Office

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (<u>www.nlrb.gov</u>). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Children's Center for Behavioral Development (14-CA-27617, 27785; 347 NLRB No. 3) Centreville, IL May 15, 2006. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by various acts including: refusing to provide Children's Center Federation of Teachers Local 4485 with requested information relevant to the Union's performance of its collective-bargaining duties as the exclusive representative of the unit employees, refusing to execute and adhere to the terms of an agreed upon collective-bargaining agreement including the payment of longevity wage increases, and bypassing the Union and dealing directly with employees by negotiating a reduction in their hours, pay, and other benefits. [HTML] [PDF]

Chairman Battista and Member Schaumber, with Member Liebman dissenting in part, reversed the judge's findings that the Respondent violated Section 8(a)(1) by issuing a memorandum to its employees that assertedly would reasonably tend to chill their exercise of Section 7 rights and maintaining an overbroad no-solicitation policy. They found that the memo was a lawful expression of the Respondent's opinion about the Union and that employees would not reasonably believe that the Respondent's no-solicitation policy applied to protected concerted activity. While agreeing with the judge that the Respondent's unilateral elimination of family therapy violated Section 8(a)(5), Chairman Battista and Member Schaumber dismissed the Section 8(a)(3) allegation, finding that the Respondent eliminated family therapy hours not in response to union activity, but because it had lawfully terminated its relationship with the sole source of funding for that therapy, the United Way.

Member Liebman, contrary to her colleagues, agreed with the judge that the Respondent violated Section 8(a)(1) by issuing a memo on Oct. 23, 2004 that interfered with the Union's relationship with employees by denigrating the Union the eyes of the employees. She also agreed with the judge that by eliminating family-therapy hours, the Respondent violated Section 8(a)(3) by unlawfully punishing the employees for seeking the United Way's assistance in collective-bargaining negotiations.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Children's Center Federation of Teachers Local 4485; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at St. Louis, MO, April 19-21, 2004. Adm. Law Judge Bruce D. Rosenstein issued his decision June 28, 2004.

Expert Electric, Inc. and United Electrical Contractors Association (UECA) a/k/a United Construction Contractors Association and its Individual-Employer Members (29-CA-21967, 22399; 347 NLRB No. 2) New York, NY May 15, 2006. The Board adopted the administrative law judge's findings that UECA violated Section 8(a)(5) and (1) of the Act by refusing to bargain with and withdrawing recognition from Electrical Workers IBEW Local 3; and that Expert Electric violated Section 8(a)(5) and (1) by its untimely and improper withdrawal from the multiemployer bargaining unit and its withdrawal of recognition from the Union. [HTML] [PDF]

The Board agreed with the judge that Section 10(b) time-bars the complaint in Case 29-CA-22399 against the individual employer-members of UECA and, accordingly, dismissed the complaint. It rejected UECA's argument that if the complaint in Case 29-CA-22399 is dismissed as against its employer-members, it must be dismissed in its entirety—i.e. as against UECA as well—for failure to join "necessary parties." The Board wrote:

The Supreme Court has stated that in Board unfair labor practice proceedings, which are 'narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights.' *National Licorice Co. v. NLRB*, 309 U.S. 350, 363 (1940). Even assuming, however, that the Board was to apply the 'traditional' rule governing necessary and indispensable parties—Rule 19 of the Federal Rules of Civil Procedure—that rule would not support a finding that the employer-members here are necessary and indispensable to this case.

The Board found that the employer-members are not necessary parties under Rule 19(a)(2)(ii) because, among others, the Board can accord full relief to the parties without the joinder of each employer member, stating: "Our Order requires UECA to bargain with the Union. That remedy is unaffected by the employer-members' presence or absence as parties in this case." Because a finding of necessity is prerequisite to indispensability under Rule 19, it follows that the employer-members cannot be indispensable. Thus, the Board affirmed the judge's finding that dismissal of the complaint against UECA in Case 29-CA-22399 is not warranted by the employer-members' absence.

The General Counsel requested that the Board order mailing of the notice to all of the unit employees, maintaining that posting of the notice at UECA's office is not a sufficient remedy given that UECA does not employ any of the unit employees and few, if any, of the employees have occasion to visit UECA's office. UECA opposed the notice-mailing request, arguing that such a remedy would impose an unreasonable burden on UECA. Chairman Battista and Member Schaumber agreed and provided for the traditional notice-posting remedy. They also noted that nothing precludes the Union from posting copies of the notices. Member Walsh would grant the General Counsel's request, saying it is "based on the realistic assessment that the unit employees are not likely to see posted notices given that they work in the construction industry."

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Electrical Workers IBEW Local 3; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York on eight days in Oct. 2000. Adm. Law Judge Steven Davis issued his decision Sept. 6, 2001.

Scripps Health d/b/a Scripps Memorial Hospital Encinitas (21-CA-36585, et al.; 347 NLRB No. 4) Encinitas, CA May 15, 2006. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from talking about the California Nurses Association at the nurses' station. [HTML] [PDF]

In analyzing whether the Respondent's conduct violated Section 8(a)(1), the judge combined legal principles applicable to no-solicitation rules with those applicable to no-talking rules. The Board did not adopt her entire rationale. It analyzed the Respondent's conduct under the principles applicable to no-talking rules and found that the record clearly established that social discussions were allowed at the nurses' station during work time. The Board noted well settled law that "an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition extends also to other subjects not associated or connected with the employees' works tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work " Jensen Enterprises, 339 NLRB 877, 878 (2003).

The judge held that the unfair labor practice found warranted setting aside a January 2005 settlement agreement. She concluded that in October 2004, the Respondent violated Section 8(a)(1) prior to the settlement by promulgating rules discriminatorily prohibiting employees from discussing the Union. In determining whether the settlement agreement was properly set aside, the Board concluded that the Respondent's postsettlement unfair labor practice breached the basic terms of the settlement agreement and that the breach warrants setting aside the settlement agreement for noncompliance. The Board also approved the judge's dismissal of the complaint allegation that the Respondent changed its bulletin board policy in violation of Section 8(a)(5).

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by the California Nurses Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing at San Diego on Sept. 26, 2005. Adm. Law Judge Lana H. Parke issued her decision Nov. 10, 2005.

Service Employees Local 1107 (Sunrise Hospital) (28-CB-6298; 347 NLRB No. 6) Las Vegas, NV May 18, 2006. The Board adopted the recommendations of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(b)(1)(A) of the Act by unlawfully restraining employees in the exercise of their Section 7 rights and by arbitrarily failing and refusing to process a grievance for Sylvia Burnett, a member of the bargaining unit. [HTML] [PDF]

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Sylvia Burnett, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Las Vegas on Dec. 13, 2005. Adm. Law Judge Joseph Gontram issued his decision Feb. 16, 2006.

United Electrical Contractors Association (UECA) a/k/a United Construction Contractors Association and its Individual Employer-Members and Eaton Electric, Inc., et al. (29-CA-18784, et al.; 347 NLRB No. 1) New York, NY May 15, 2006. The Board affirmed the administrative law judge's finding that the Respondents, a multiemployer association (UECA) and 50 of its employer members, violated Section 8(a)(5) and (1) of the Act by failing to provide and delaying in providing necessary and relevant information requested by Electrical Workers (IBEW) Local 3. [HTML] [PDF]

The Board also affirmed the judge's rejection of the Respondents' procedural defenses. The Respondents argued that the complaint in Case 29-CA-18784 should be dismissed as against the individual employer-members of UECA because they were not served with the underlying charge within the 6-month limitations period set forth in Section 10(b) of the Act, that the complaint was not served on all of the Respondent employer-members of UECA and that, even if the complaint was so served, it failed to put them on notice that the complaint allegations were being asserted against them and not solely against UECA. The Respondents further argued that the complaint against the employer-members of UECA in Case 29-CA-18784 should be barred under the doctrine of laches. In making this argument, the Respondents relied on the fact that the General Counsel did not specifically name any employer-members of UECA as respondents in this case until nearly 5-1/2 years after the complaint first issued.

Contrary to the judge, Chairman Battista and Member Schaumber found that a 12-month extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962), is unwarranted. They noted that during an extension of the certification year, employees are unable to exercise their Section 7 right to oust or change their representative and given the time period involved, they believed that employees should be given that Section 7 right after a reasonable period of time during which the effects of the "information" violation can be remedied. Member Walsh agreed with the judge that the Respondents' refusal and failure to provide all of the information requested by the Union, beginning 1 month before collective bargaining began and continuing through the cessation of bargaining approximately 4 years later, warranted a 12-month extension of the certification year.

Chairman Battista and Member Schaumber found that the mailing of the notice to all of the unit employees, as requested by the General Counsel, is unnecessary. The General Counsel maintained that posting of the notice at UECA's office is not a sufficient remedy given that UECA does not employ any of the unit employees and few, if any, of the employees have occasion to visit UECA's office. Chairman Battista and Member Schaumber agreed with UECA that such a remedy would impose an unreasonable burden on UECA. They also noted that nothing precludes the Union from posting copies of the notice at the union hall.

Member Walsh would modify the judge's recommended Order as requested by the General Counsel. In his view, the General Counsel's notice-mailing request is based on the realistic assessment that the unit employees are not likely to see posted notices given that they work in the construction industry.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Electrical Workers (IBEW) Local 3; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, Oct. 19, 23, and 27, 2000. Adm. Law Judge Steven Davis issued his decision Sept. 7, 2001.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Advanced Architectural Metals, Inc. (Carpenters Local 1780) Las Vegas, NV May 15, 2006. 28-CA-20502, 20572; JD(SF)-21-06, Judge James M. Kennedy.

Jeffs Electric, LLC (Electrical Workers [IBEW] Local 35) Brooklyn, CT May 12, 2006. 34-CA-11371, 11398; JD(NY)-21-06, Judge Joel P. Biblowitz.

Meyer's Bakeries, Inc. and Southern Bakeries, LLC (Teamsters Local 878, Bakery Workers Local 111, and Individuals) Hope, AR May 12, 2006. 26-CA-21843, et al.; JD(ATL)-19-06, Judge Margaret G. Brakebusch.

Success Village Apartments, Inc. (Auto Workers Local 376) Bridgeport, CT May 16, 2006. 34-CA-10622, et al.; JD-30-06, Judge Wallace H. Nations.

Park Maintenance, Palisades Maintenance and Park View Towers, Alter Egos (Teamsters Local 11) West New York, NJ May 18, 2006. 22-CA-26709, 27008; JD(NY)-22-06, Judge Steven Davis.

Area Trade Bindery Co. (Graphic Communications Workers Local 404) Burbank, CA May 16, 2006. 31-CA-26970, 27500; JD(SF)-24-06, Judge Jay R. Pollack.

Birnie Bus Service, Inc. (Food & Commercial Workers Local One) Utica, NY May 17, 2006. 3-CA-25653; JD-34-06, Judge Wallace H. Nations.

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Interstate Waste Services of New Jersey, Inc. (Teamsters Local 945) (22-CA-27216; 347 NLRB No. 5) Newark, NJ May 18, 2006. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Visteon Corp., Sterling Heights, MI, 7-RD-3511, May 16, 2006 (Chairman Battista and Members Kirsanow and Walsh)

DECISION, ORDER, AND DIRECTION OF THIRD ELECTION

F & M Taping Corp., New York, NY, 29-RC-11235, May 16, 2006 (Chairman Battista and Members Kirsanow and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Durham School Services, LLP, Racine, WI, 30-RC-6632, May 16, 2006 (Chairman Battista and Members Kirsanow and Walsh)

Bragg's Electric Construction Co., Little Rock, AR, 27-RC-8425, May 16, 2006 (Members Kirsanow and Walsh; Member Schaumber dissenting)

Los Angeles Leadership Academy, Los Angeles, CA, 31-RM-1281, May 17, 2006 (Members Schaumber and Walsh; Member Kirsanow dissenting)
